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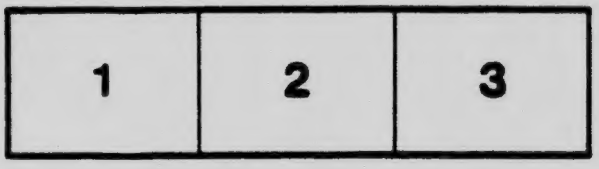

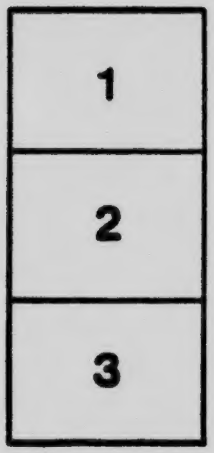

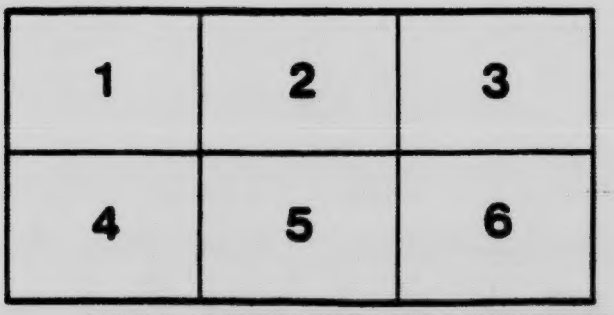

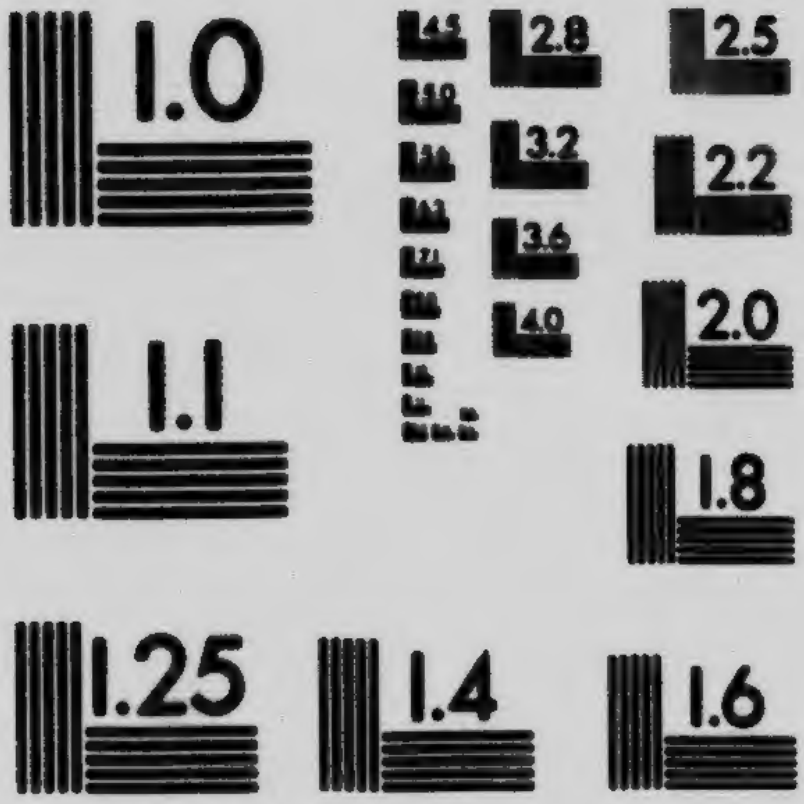

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An Explanation

OF THE

NEED FOR THE DOMINION ACT

DEALING WITH

JUVENILE DELINQUENCY

BY

W. L. SCOTT, OTTAWA

Issued by J. J. Kelso, Superintendent of Neglected and Dependent Children of Ontario. Parliament Buildings, Toronto.

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Pamph
1908
No. 83

Issued by J. J. Kelso, Superintendent of Neglected and Dependent Children of Ontario. Parliament Buildings, Toronto.

THE JUVENILE DELINQUENT ACT.

"It is wiser and less expensive to save children than to punish criminals."

The Juvenile Delinquent Act, which was adopted by the Dominion Parliament at the session of 1907-8, marks a great advance in the methods of dealing with delinquent children. It provides for a system such as is already in force in Great Britain, Germany, the United States (26 States), Australia and Sweden, and which is likely soon to be universally adopted throughout the civilized world. The system, however, depends for its effective operation on an enlightened public opinion, and the Dominion Act, therefore, wisely provides that it will be put in force by proclamation in such places only as ask for it, and are prepared with the necessary machinery for putting it into proper operation. With a view to enlisting co-operation in this splendid work, the reader is asked to give attention to the following:—

The great requisite in Canada to-day is population, and accordingly we spend vast sums in encouraging immigration. It is calculated that every able-bodied male immigrant is worth $1,000 to the State. Yet there are at the present moment more than 2,000 able-bodied men confined in our gaols and penitentiaries, not only making no contribution to the wealth of the community, but housed and supported and guarded at great expense to the State. This is on the material side, and there is, of course, the vastly more important moral aspect of the case. Why are these men criminals? They are in at least the vast majority of cases, what they have been brought up to be. If they are criminals it is because they have been made so while children. Statistics show that comparatively few become criminals after reaching maturity. The delinquent children of to-day are the adult criminals of to-morrow.

Children are the product of their surroundings. Children who break the criminal law or are growing up in idleness and crime are precisely what any children would be if similarly situated. Of the children taken from the worst surroundings by the Ontario Children's Aid Societies and placed in good foster homes, less than two per cent. go wrong. The

same is true of the Barnardo children, and those sent out here from Great Britain by other rescue societies. Dr. Snedden, as a result of a careful study of the reform schools of the United States, concludes that it is impossible to prove that heredity has any influence in the making of juvenile criminals, since there is in every instance ample in the environment to account for the result. Dugdale's investigation of Criminals ("The Jukes"), convinced him that the "tendency of heredity is to produce an environment which perpetuates heredity." Professor Swift ("Mind in the Making"), says: "Investigation of the lives of reform-school boys always leaves the impression that, with possibly a few exceptions, they are quite representative of the average, active, normal boy, and the investigator usually ends his work with the overwhelming conviction that, after all, probably the only reason why he and his boyhood associates did not graduate from the same sort of an institution was the difference in their environment." And again: "In the light of recent studies in suggestion it is impossible to say where the influence of heredity ends, and that of social suggestion begins. Much that has been ascribed to heredity may be the result of social suggestion." Dr. Travis ("The Young Malefactor"), after an exhaustive study of the question extending over six years, and carried on both in Europe and America, concludes that at least 90 per cent. and probably 98 per cent. of first court offenders are normal; that not only all the normal offences, but some of the morbid and abnormal delinquencies are due to environment; that the chief cause of delinquencies is the non- or semi-functionary home; that the treatment of the normal deliquent should be primarily the influence of strong personality exerted in the atmosphere of a home, natural or foster; and that the abnormal delinquent should be subjected to special treatment and isolation. If, then, delinquent children are purely, or even mainly, the victims of circumstances, why treat them like adult criminals? If it is good influence that is wanting, why not endeavour to supply it, instead of resorting, as is so often done, to vindictive punishment, which experience has shown to be of no avail in eradicating the evil?

If it is environment in childhood that counts in the making of criminals, the true and only way to cope with crime is to improve the environment, when it is capable of improve-

ment, and when that cannot be accomplished, to remove the children to better surroundings. The rights of parents are sacred and ought not to be lightly interfered with, but they may be forfeited by abuse. Paramount to the rights of parents is the right of every child to a fair chance of growing up to be an honest, respectable citizen. What chance has the daughter of a prostitute, if left with her mother, to be other than a prostitute, or the son of a thief to be other than a thief? And why should this girl be condemned, through no fault of her own, to a life of prostitution, or that boy, unwittingly, to a career of crime? The State, too, has rights and ought not to stand idly by while children are trained, either by evil example or by neglect, to disobey her laws.

The Juvenile Delinquent Act supplies a practical application of this reasoning, and may be said to be based on three principles:—

1. That probation is the only effective method of dealing with youthful offenders.

2. That children are children even when they break the law, and should be treated as such, and not as adult criminals. As a child cannot deal with its property, so it should be held incapable of committing a crime, strictly so called.

3. That adults should be held criminally responsible for bringing about delinquency in children.

Other features of the Act are:

4. Trials of children before a judge specially selected for his fitness for the work.

5. Incarceration of children awaiting trial (when necessary), in detention homes instead of gaols.

6. Sentencing of children (when probation fails), to industrial schools, or reform schools, and not to gaols and penitentiaries.

7. Supervision of probation work by a voluntary committee of citizens, who would also offer advice to the Court. Where there is a Children's Aid Society the committee of such society is intended to be the Juvenile Court Committee.

The reform which the Act seeks to introduce is marked not alone by a change of procedure or the adoption of new methods, but most of all by the introduction of a new spirit and a new aim. The judicial attitude towards the child has hitherto been that of punishment and repression. The atti-

tude of the Juvenile Court is benignant, paternal, salvatory, and for these reasons more efficiently corrective. The Criminal Court is merely a vestibule to the Reform School. The Reform School is looked on by the Juvenile Court as, not a first, but a last resort, to be invoked only when the Court itself has tried and failed. The spirit of the Court is always that of a wise and kind, though firm and stern, father. The question is not, "What has this child done?" But, "How can this child be saved?"

By far the most important element in the system is probation. It is the keystone of the arch. Without it the Juvenile Court would be almost powerless for good. With it, and nothing else, a vast amount can be done. You cannot deal with children as a class. You must deal with them as individuals. You must win the confidence, the respect, even the love of each individual child, would you make of it what you desire it to be. It is the personal touch that counts, and that touch is supplied by the Probation Officer.

The duties of the Probation Officer are three-fold: before trial, at trial, and after trial.

As soon as a child is arrested, or informed against, a Probation Officer is at once notified. Her first duty is to see the child as a friend, to get its confidence, and to hear its story. She then visits its home, school, or place of employment, and any other place where information about its habits and its history may be obtained.

Recognizing that the child is the product of its environment, she endeavours to put her finger on the cause of its ill-doing. The home surroundings, the condition and disposition of the parents, are ascertained, and the information put at the disposal of the Judge.

In the Court the Probation Officer appears to represent the child, as friend, though not as excuser. She represents to the Judge the course which the result of her enquiries has led the Juvenile Court Committee to consider would be for the best interest of the child. In most cases the issue will be the release of the child on probation in charge of the officer. The Judge takes advantage of the occasion to make as strong an impression as possible on the mind of the child, and the Probation Officer seizes on this precious psychological moment, immediately after the trial, to deepen

and supplement the impression already made by a serious talk and words of advice.

After the trial comes her most important range of duties. She must see the child frequently, at first it should be every day, and by her personal influence endeavour to form it into what it should be.. She comes into touch with the home, and occasionally reforms the whole family as well as the child. She visits the school, or the place of employment, and enlists the teacher, or the employer, in the work of helping the child. Whilst the keynote of all this is kindness, yet there is behind her the firm hand of the law. The child and its parents both know that on her report he may be sent to the reform school, and the knowledge adds greatly to her influence, and to the respect in which she is held. If all care fail, she brings the child before the Judge for commitment to an institution. If the home is so bad that reform there is hopeless, she recommends that the child be placed in a foster home.

The question of the sex of the Probation Officer is an open one. The feminine gender is here used because experience has shown hitherto that women, intended by nature for motherhood, are better fitted for the work than men. Moreover, it is important that probation officers should be chosen from the best class—should represent the highest order of men and women—and a better class of women than of men can frequently be got for the money available. Perhaps the best arrangement where a number of probation officers are employed is to have the chief probation officer a man, and most, if not all, of his assistants, women. It is important in inaugurating the system that the probation officers first appointed should thoroughly understand the work. For this reason the two Ottawa probation officers before entering on their duties spent a couple of weeks in Philadelphia studying the work as carried on there; and the first probation officer appointed in Montreal spent a week in Ottawa with a similar object.

It must be obvious from what has been said that probation is a most valuable addition to our juvenile reformative agencies.

In Canada to-day a Judge or magistrate before whom a child is convicted of an infraction of the criminal law has practically only two courses open to him, either release on suspended sentence or commitment to an industrial school or

similar institution. There is also commitment to gaol or penitentiary; but that should never be resorted to. For a child the gaol is nothing but a school of crime. Yet there are in Canada at the present time more than one hundred children serving sentences in adult penal institutions! But assuming that the magistrate recognizes the evil of commitment to gaol he has still only the two alternatives of release on suspended sentence or commitment to a reformative institution. Too high praise cannot be given to the work being done in some Canadian industrial schools and juvenile reformatories: but at best they are no more than a necessary evil. They are endeavouring to accomplish an extremely difficult task, that of collecting bad children from all over a Province and endeavouring to reform them together. What wise parent would place a naughty child with other naughty children in order to make him better? The children compare notes as regards their respective criminal achievements, and there is bound to be considerable glorying in evil. Moreover friendships are formed which persist after release and do nothing but harm. It is within the knowledge of all who are engaged in child rescue work that children frequently come back from these institutions worse than they were when they went. There are other objections. However it is to be regretted, it is none the less true that a child once committed to an industrial school is marked for life. It ought not to be so, but it is. Moreover a domestic home, and not an institution, is now recognized as the best place in which to bring up a child. Children brought up in an institution become "institutionalized," are wanting in initiative: and are largely unfitted, owing to lack of experience and other causes, for making their way in the world and for creating for themselves happy domestic homes. Finally there is the expense of maintaining children in industrial schools, which is considerable, and which usually falls on the public. There must of course be such institutions. There will always be cases which cannot be dealt with otherwise. But in no instance where such a course can be avoided should the industrial school be resorted to.

Release on suspended sentence without more is, in the majority of cases, equally or even more objectionable. Children are, as has been pointed out, the product of environment. Yet when a child, who has started on the downward course, is released on suspended sentence, he goes back to what has

caused his first downfall without anything extraneous to aid him in avoiding further lapses. With some children, especially where the home is good, this succeeds; but the result is apt to be far otherwise. The boy may come back a hero to his companions by reason of his having been in Court. He may reflect that as he offended and practically nothing came of it, he incurs no serious risk in offending again. A momentary impression, however vivid, with most children soon wears off and is forgotten, and an immature child is expected to do what we adults so frequently fail to do, keep a good resolution. In fact any magistrate will testify that suspended sentence is as a rule of little use in preventing juvenile crime. So that in Canada to-day, under the best of circumstances, in dealing with delinquent children, you have either the reform school, which seldom reforms, or the suspended sentence, which means doing nothing and trusting to luck. Probation supplies a third alternative and one vastly more effective than either of the others. Probation has been in voluntary operation in Ottawa since the 1st of August, 1906, and in Montreal since the 1st of January, 1908, and has worked wonders in both of these places. In Ottawa in the first complete year of probation, out of 240 delinquent children dealt with, only three had to be sent to Industrial Schools; and some remarkable cases are reported of the reform through the agency of the probation officers of even older boys who had already proceeded some distance on the road to a criminal career. The system has proved particularly effective in the case of inveterate truancy, the almost invariable prelude to more serious delinquency. So much so that many Ottawa school principals say that it has solved the truancy problem.

An important element in the Juvenile Court system is the personality of the Judge. To make a good children's Judge a man should be of very hopeful temperament and not easily discouraged. A man accustomed to deal with hardened criminals, as in the ordinary Police Courts, is apt to be thereby unfitted to deal successfully with children. A man must understand children and know how to win their confidence and make them understand him. To endeavour to deal formally with them, as is done on the trial of an adult, is worse than useless. Judge Stubbs of Indianapolis, a most successful juvenile Judge, says on this subject; "It is the personal touch that does it. I have often observed that if I am on a high platform behind a high desk,

such as we have in our city court, with a boy on the prisoners' bench, some distance away, my words had little effect on him; but if I could get close enough to him to put my hand on his head or shoulder, or my arm around him, in nearly every such case I could get his confidence." In many places in Canada a judge or magistrate will no doubt be found to be already in office who is fully qualified to act as Juvenile Court Judge in addition to his other duties. Wherever such is not the case, however, and the place is large enough to permit of such a course being followed, the appointment of a special Children's Judge should be secured.

Another important element, perhaps after the probation officer, the most important of all, is the Juvenile Court Committee. It is in fact essential to the success of the system. In Ottawa and Montreal the committees meet once a week. It was predicted that it would be impossible to secure weekly meetings, but the work proved so interesting that no difficulty was experienced in that respect. In Ottawa the average attendance at these meetings has been between eight and nine. The Montreal Committee is under the presidency of a Judge, and the Ottawa one under that of a lawyer, and other lawyers work on them. The committees are made up of Protestant and Catholic, French and English, clergymen and laymen and women of all denominations, for the work is strictly non-denominational, or rather inter-denominational. It is moreover wise to let it be known that anyone interested, even though not regularly elected to the Committee, will be welcome at the meetings. This policy secures many recruits. At the meetings the list is gone carefully over, the Probation Officers reporting on each case. When a case of special difficulty arises the Committee put their heads together and endeavour to decide what is the best course to pursue in the case of that particular child. The advantages of this are manifold. The Probation Officer is not left to her unaided judgment and effort; her work is supervised and kept up to the mark, and the danger of its being neglected or becoming perfunctory is minimized. Should probation once become perfunctory or degenerate into a mere routine, it might almost as well be abandoned. The system, merely as such, cannot succeed. It is the loving and unsparing personal effort, fresh with every new case as with the first,

that alone can save. The work of the Committee has another great advantage; it gets a number of good people interested in child saving, into actual touch with children needing to be saved, and the result is bound to be, and should be, personal work with those children. A Probation Officer has fifty or sixty cases to deal with (she cannot effectively undertake more), and a certain number of these will probably need more attention than she has time to give. Moreover while there is scarcely a child, who, if taken by the right person in the right way, cannot be reformed, the Probation Officer may not be the right person or hit on the right way in some particular case. A member of the Committee may succeed where the Probation Officer would have failed. This work of acting as volunteer Probation Officer is being carried on by several members of the Montreal and Ottawa Committees. It is being carried on by hundreds of men and women in the large American cities. You there see a busy professional man or merchant finding time to take a delinquent boy to a baseball game or into the country for an outing, and even taking him to his own home to shew him what home life should be. You see high class women acting similarly towards wayward girls. What they are doing we in Canada can and should do. It looks at first like making a great sacrifice; and all are not so situated as to be able to undertake it, nor are all fitted by temperament and disposition for doing so with success; but it will be found to take up far less time than might be imagined, and it is certainly worth while. It is generally admitted that a hobby is an excellent thing for everyone. What better or nobler and what more interesting hobby than that of making a good citizen and a good Christian out of one who might, without the help thus given, grow up an enemy to Society and a stranger to God!

Comments on some of the sections of the Juvenile Delinquent Act may be useful.

Section two defines "child" as any girl or boy apparently or actually under the age of sixteen years.

It defines "juvenile delinquent" as any child who violates any provision of the Criminal Code or of any Dominion or Provincial statute, or any by-law or ordinance of any municipality for which violation punishment by fine or imprisonment may be awarded: or who is liable by reason of any other act to be committed to an Industrial School. The

object of adopting the designation "juvenile delinquent" is that children who break the criminal law may be known by some term other than "criminals," recognizing that they are in a different class from ordinary adult criminals and saving them from the brand of a "criminal record" at the outset of their careers. The definition of a "juvenile delinquent" is on the other hand, made wide enough to enable the Juvenile Court to extend a helping hand to every child needing assistance.

The Juvenile Court is given exclusive jurisdiction in cases of juvenile delinquency (sec. 4) and all trials are to be summary (sec. 5). In order to provide for exceptional cases the Court may in the case of a child over fourteen accused of a serious offence, order the child to be proceeded against in the ordinary way under the Criminal Code, but only when the good of the child and the interest of the community demand it (sec. 7). Due notice of the hearing of any charge of delinquency must be served on parents or guardians (sec. 8), and probation officers must be notified in advance (sec. 9). Private trials in some suitable place other than a Court room are provided for, and names of delinquents must not be published in the press, except by leave of the Judge (sec. 10). Save in exceptional cases where the Judge thinks it well to order otherwise, no child, pending a hearing, shall be held in a gaol or lock-up, and fine and imprisonment is provided for those who violate this provision (sec. 11). Children are to be held in "detention homes" when such exist (sec. 12). The detention home is an important factor in the work. It should be conducted more on the lines of a family home than of an institution and should have nothing of the gaol about it. It is usually in charge of a man and his wife, carefully selected for their fitness for the work, and the children, as a rule, take their meals all together with them. There should be no more restraint than is found to be absolutely necessary. The children should be kept constantly employed either at work or at supervised play. Where possible one or more teachers should be provided and the children should continue their school work precisely as though in school. Classes in manual training where practicable are also most useful. In smaller places, where a separate establishment is not possible, arrangements can be made with suitable persons for the use of their own homes as detention homes.

The Act provides (sec. 14) that on the trial of a child the proceedings may be as informal as the circumstances will permit. Where a child does not understand the nature of an oath its unsworn testimony may be received (sec. 15). Section 16 is important, providing as it does the courses which may be pursued when a child has been proved delinquent. The Court may adjourn the hearing for any definite or indefinite period; may fine to the extent of ten dollars; may put on probation; may cause the child to be placed in a suitable family home as a foster home; may commit to a Children's Aid Society, or may commit to an Industrial School, or similar institution. An order may be made on the parents for the support of the child; and in every case the child is to remain a ward of Court until discharged or until twenty-one, and may be brought again before the Court at any time for further action based on the report of the probation officer or other person who has been in charge of the child. By sub-section 5 the action taken must in every case be that which the Court is of opinion the child's own good and the best interests of the community require.

By section 17, where the provincial authorities so order, a child committed to a Children's Aid Society or Industrial School may thereafter be dealt with under provincial law.

By section 18, where a fine, damage, or costs might in the case of an adult be imposed, they may in the case of a child be imposed on the parent or guardian of the child, unless he has not in the opinion of the Court conduced to the commission of the offence by neglecting to exercise due care of the child or otherwise.

By section 19 children placed in foster homes must be put with people of their own faith, and, where a Children's Aid Society is denominational, children of a different denomination cannot be committed to it.

No child, other than an infant in arms, may be present in Court unless as a witness or for some other legitimate reason (sec. 20). No child under twelve years may be committed to an Industrial School unless probation has been first tried and has failed (sec. 21), and no child shall under any circumstances (unless it has been dealt with under section 7) be sentenced to an adult penal institution.

Sections 23 and 24 provide for the Juvenile Court Committee, to which reference has already been made, and sec-

tions 25 and 26 deal with the appointment and duties of probation officers.

Section 29 is most important, providing as it does for the punishment of adults responsible for delinquency in children by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year or by both fine and imprisonment. The Juvenile Court has jurisdiction in this respect. The law is not intended to be administered harshly. Parents will be put on probation like their children. But if juvenile crime is to be stopped, adult contribution thereto should be put down with a firm hand.

Prosecutions against adults for all offences in respect to children may be dealt with in the Juvenile Court (sec. 30).

Section 31 strikes the keynote of the Act. It reads: "This Act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by its parents, and that as far as practicable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance."

The Act is not to affect provincial legislation; and where a provincial Act applies and the delinquency would not in the case of an adult be an indictable offence, the child may be dealt with either under the Provincial Act or the Juvenile Delinquents Act, as may be deemed to be in the best interests of the child (sec. 32).

Sections 34 and 35 provide for the putting in force of the Act by proclamation in any province, city, town or other portion of a province where proper facilities are provided. These may be provided either by provincial legislation (sec. 34), or by municipal councils or otherwise (sec. 35).

In the Canada Gazette of September 26th is published an order-in-council which provides that before the Act is put in force under section 25 the Governor-in-council must be satisfied.

1. That a proper detention home has been established, and will be maintained, for the temporary confinement of juvenile delinquents, or of children charged with delin-

quency. The institution should be conducted more like a family home than like a penal institution, and must not be under the same roof as, or in the immediate vicinity of, any police station, jail, lock-up, or other place in which adults are or may be imprisoned. (See section 11.)

2. That an Industrial School, as defined by clause (h) of section 2 of the Act, exists, to which juvenile delinquents may be committed.

3. That there is a Superior Court, or County Court Judge or Justice, having jurisdiction in the city, town, or other portion of a province in which it is sought to have the Act put in force, willing to act as Juvenile Court Judge, and that the remuneration of such Juvenile Court Judge (if any) has been provided for without recourse to the Federal authorities.

4. That remuneration for an adequate staff of probation officers has been provided by municipal grant, public subscription or otherwise. (See sections 25, 26, 27 and 28 of the Act).

5. That some society or committee is ready and willing to act as the Juvenile Court Committee. (See sections 23 and 24 of the Act).

Ottawa. W. L. Scott.